arrange their affairs. Such behavior does substantial damage to the rule of law.

What such behavior also demonstrates is a refusal to enforce the laws enacted by Congress. It shows that chapter 154 will remain a dead letter so long as the obligation to enforce it remains in the hands of courts such as the Ninth Circuit. It is clear that, if any two of the 11 judges who joined the Spears rehearing dissent are assigned to a future Arizona 154 case, they will not feel obligated to follow Spears and the State will be relitigating the issue of its 154 status from scratch. Indeed, portions of the Spears dissent argue that Arizona's ''statutory scheme did not comply with Chapter 154's requirements.'' *Spears*, 283 F.3d at 1002 (Reinhardt, J., dissenting from denial of rehearing). The tone of the 11-judge dissent also betrays an open hostility to the chapter 154 system.

The trouble with chapter 154 is that the courts assigned to decide when it applies are the same courts that would be bound by the chapter's strict deadlines if a State is found to qualify. Simply put, the regional courts of appeals have a conflict of interest. They decide whether the States are entitled to a benefit which places a burden on the courts themselves. Some prosecutors also believe that refusal to enforce chapter 154 also reflects a hostility to the death penalty—that some judges are ignoring the law because they do not want to see death sentences carried out. If this is true, it is absolutely unacceptable. A judge has an obligation to uphold and enforce a valid law, whether or not he agrees with it.

My amendment makes several changes to chapter 154 to ensure that it provides real and meaningful benefits to States that provide quality post-conviction counsel. First and most importantly, it assigns the 154 certification decision to the U.S. Attorney General and the DC Circuit, rather than the local courts of appeals that have an interest in the case. The Attorney General receives no benefits from chapter 154, and he has expertise in evaluating State criminal justice systems. Just last year, for example, Congress assigned the Attorney General to evaluate State DNA testing and capital counsel systems in the Justice for All Act. Review of the Attorney General's decision in the DC Circuit also is appropriate. Because there is no Federal habeas review of criminal convictions in the District of Columbia, the DC Circuit also has no stake in whether or not a State qualifies for chapter 154.

My amendment, like subsection (d) of section 507, also makes clear that a determination that a State has satisfied the chapter 154 standard as of a particular date will apply retroactively to all pending habeas cases for which the prisoner received State habeas after the certified date. This will ensure that a State will receive all of the procedural and litigation benefits that it should have received had the Federal habeas claim been governed by chapter 154 from the day that it was filed, as it should have been. The proposed paragraph 28 U.S.C. 2265(a)(2) in my amendment makes clear that, once the Attorney General determines that a State established a post-conviction capital-counsel system by a particular date, the chapter 154 eligibility certification shall be effective as of that date. Thus, if a capital prisoner received State habeas counsel after that effective date, the case is governed by chapter 154 in Federal proceedings.

However, some courts might construe 2265(a)(2) to mean that while the chapter 154 system thereafter governs Federal habeas applications that have already been filed, the actual procedural benefits of that chapter—especially the claims limitations and amendment limits would only apply on a going-forward basis—i.e., only to claims or amendments filed after the date of enactment of this law. Thus when I added a few other provisions to the amendment, I also inserted subsection (g), which is the same as subsection (d) of section 507. This subsection, by explicitly applying section 507 and the changes that it makes to all qualified pending Federal habeas cases, should make clear that when Congress says that it wants the new law to apply retroactively, it means that the law will apply retroactively—that it will govern new claims as if it had been in effect as of the effective date of the chapter 154 certification.

Any non-retroactive application of chapter 154 would be fundamentally unfair to States such as Arizona, which has been providing post-conviction counsel to State prisoners for nearly a decade but has been inappropriately denied the benefits of chapter 154 for some cases that already have progressed to Federal habeas. In the Spears case, for example, the Ninth Circuit even found that Arizona's counsel system met chapter 154 standards, but the court nevertheless came up with an excuse for refusing to apply chapter 154 to that case. If the Attorney General and the DC Circuit conclude that Arizona met chapter 154 standards prior to Spears's receipt of counsel, as I am confident that they will, Arizona should receive all of the benefits of chapter 154 for that case and subsequent cases, as if chapter 154 had governed the Federal petition as of the day it had been filed (as it should have). Chapter 154, for example, does not allow cases to be remanded to State court to exhaust new claims (a considerable source of delay on Federal habeas), and it places very sharp limits on amendment to petitions. Arizona should not be forced to litigate claims in Spears's petition that were defaulted, that were unexhausted and sent back to State court, or that otherwise were not addressed by State courts when Spears first filed the petition (unless those claims meet the narrow exceptions in subsection 2264(a)). Nor should the State be forced to litigate claims that were added to the petition in amendments that do not satisfy chapter 154's limits on amendments.

Applying chapter 154 retroactively may seem harsh, but it is important to recall that any prisoner whose Federal petition will be governed by 154 necessarily received counsel in State post-conviction proceedings. Unlike the typical uncounseled State habeas petitioner, who may not have been aware of State procedural rules or of all the potential legal claims available to him, a chapter 154 habeas petitioner will have no excuse for not making sure that all of his claims were addressed on the merits in State court. (Or rather, any excuse will be limited to those authorized in 28 U.S.C. 2264(a).) I believe that, given the resources Arizona has devoted to providing post-conviction counsel, the State should easily qualify for chapter 154. The Ninth Circuit has treated Arizona unfairly by denying it chapter 154 status. If the U.S. Attorney General and DC Circuit agree that Arizona should have been 154-certified when Spears filed his Federal petition, Arizona should be placed in the same position that it would be in today had the Spears case proceeded under chapter 154 from the beginning.

My amendment also extends the time for a district court to rule on a 154 petition from 6 months to 15 months. I have been informed that the bill that became the 1996 Act originally adopted 6 months as the limit as an initial bargaining position. The intention had been to eventually extend this to 12 months, but because of the politics of the enactment of AEDPA, it was not possible to change this deadline later in the legislative process. My amendment is even more generous than the original authors' intention, giving the district courts 15 months, in recognition of their burdensome caseloads and the fact that they do the real work in Federal habeas cases—they are the courts that hold hearings, if necessary, to identify the truth of a case. This same change was included in subsection (e) of section 507.

Subsection (f) of section 507 is the same as a provision in subsection (e) of my amendment. This subsection codifies the rule of *McFarland* v. *Scott*, 512 U.S. 849 (1994), which allows a stay to issue on the basis of an application for appointment of Federal habeas counsel (without the actual filing of a petition), but it limits such stays to a reasonable period after counsel is actually appointed or the application for appointment of counsel is withdrawn or denied.

PERSONAL EXPLANATION

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, December 30, 2005

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall votes Nos. 664 and 671. Had I been present, I would have voted ''aye.'' Mr. Speaker, I ask unanimous consent that my statement appear in the permanent RECORD immediately following these votes.

H.R. 2520, on Passage, rollcall No. 664, ''aye.''

H. Con. Res. 275, rollcall No. 671, ''aye.''

CONFERENCE REPORT ON H.R. 2863, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

SPEECH OF

HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Sunday, December 18, 2005

Mr. CROWLEY. Mr. Speaker, shame! That is all I can say—both on the way the Republican leadership has governed this country this year—and on how they are using the troops as a political tool to provide huge taxpayer benefits to the oil and gas industry.

Over 2,100 Americans killed in Iraq, and the Republican leadership waits until the last night of Congress—3 months after we needed to fund the military—to pass the spending bill for our troops.

This is called a ''must pass'' bill, as it is one Congress MUST pass as if we don't, the military will literally run out of money and not be